IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.03.2007

CORAM:
THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.31104 of 2003

R.T.M.L.M.S. Higher Secondary School
represented by its Correspondent
Mr. D.R. Jaya Singh
Venkanji
Kollemcode Post
Kanyakumari District .. Petitioner

vs.

1. The Government of Tamil Nadu
represented by its Commissioner and
Secretary to Government
Education Department
Fort St. George, Chennai - 600 009

2. The Director of School Education
College Road
Chennai - 600 006

3. The Chief Educational Officer
Nagercoil
Kanyakumari District

4. The District Educational Officer
Kuzhithurai
Kanyakumari District .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus as stated therein.

For petitioner Mr. R. Subramanian, Senior Counsel
for Mrs. S. Hemalatha

For respondents Mr. K. Balakrishnan, Addl. Govt. Pleader

O R D E R

This writ petition has been filed seeking a writ of certiorarified mandamus to call for the records of the proceedings in Letter No.15918/Higher Education 2/2002-6, dated 03.10.2003 on the file of the first respondent, to quash the same and to direct the respondents to sanction post-graduate assistant posts and other staff strength and grant for payment of salary thereon for Higher Secondary classes in the petitioner school.

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2. The petitioner school is a religious minority school managed by the Corporate Management of CSI School, Kanyakumari Diocese. The school which was started as a Middle School in 1949, was upgraded as High School from 1976. The school commenced classes for Higher Secondary in 1986-1987, though approval was granted by the first respondent by his proceedings dated 31.10.1991. The upgradation was given from the academic year 1991-1992 on certain conditions, the important one being no Government grant would be sanctioned in future for the Higher Secondary stage.

3. Further, vide proceedings dated 23.07.1992 passed by the second respondent, the petitioner school was permitted to have two branches of study, one consisting of Maths, Physics, Chemistry and Biology and the other one being History, Economics, Commerce and Accountancy. Though the school requires 10 post graduate assistant teachers for Higher Secondary classes, the respondents have neither sanctioned the post graduate assistant posts nor the grant.

4. Aggrieved by the action of the respondents in not providing them either sufficient posts or grant, the petitioner sent a representation to the second respondent, enclosing a copy of the Government Order granting approval, with a request for sanction of minimum posts and also grant; but the respondents did not pass any orders on the petitioner's representation. Due to the inaction of the respondents in spite of the order of this Court to consider the petitioner's representation in W.P. No.8406 of 2002 filed by the petitioner, the petitioner filed Contempt Application against the respondents and after being served notice in the Contempt Application, the first respondent passed an order dated 03.10.2003 rejecting the petitioner's representation. As against that order of the first respondent, the present writ petition.

5. The main grounds of challenge in the writ petition are that:

(i) having upgraded the school and having accorded sanction to Higher Secondary classes in two groups, the respondents are bound to sanction post-graduate assistant posts and grant-in-aid as per Section 14 of the Tamil Nadu Private Schools (Regulation) Act, 1973;

(ii) appointment of qualified and efficient teachers is a sine qua non for maintaining high standard of teaching in any educational institution and that being the case, having sanctioned posts and also grant to other similar schools, the respondents are not supposed to treat the petitioner in a different manner; and

(iii) the denial of the respondents to sanction staff grant on the basis of G.O.Ms. No.340, 525 and 61 are arbitrary and discriminatory.

6. The respondents have filed their counter and their case is as follows:

• The petitioner school was upgraded from the academic year 1991-1992 vide proceedings dated 31.10.1991 passed by the

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second respondent on condition that the Government would not sanction any grant in future and this proceedings was passed as per the Government Order dated 29.10.1991 in and by which the Government authorized the second respondent to upgrade 18 High Schools into Higher Secondary Schools but without any grant or financial assistance to such institutions at any time. Further, the petitioner school had also given declaration that no Government grant or financial assistance would be required by them for the higher secondary stage pursuant to which, the second respondent had issued orders permitting conduct of two groups and in view of this, the petitioner's prayer for grant of post-graduate posts and salary for teachers appointed in higher secondary classes cannot be entertained.

7. Mr. R. Subramanian, learned Senior Counsel, appearing on behalf of Mrs. S. Hemalatha, counsel for the petitioner, has contended that when the State has admitted in its G.O.Ms.No.317 dated 25.07.1997 that grants were sanctioned to a number of schools in 1987-1988 and earlier and since the petitioner school commenced classes for higher secondary even in 1986-1987 itself, it also becomes eligible to get sanction of staff strength and grand-in-aid. He has further contended that as per Section 4 of the Tamil Nadu Recognised Private Schools (Regulation) Act, r/w Rules 6, 8 and 9, since the petitioner school is a minority school, it had started Higher Secondary classes in 1986-1987 itself even without prior sanction from the respondents. Finally, it is his contention that the petitioner school is entitled to the protection under Article 30 of the Constitution and the State having granted recognition and approval, should also provide post-graduate assistant posts and grant-in-aid.

8. On the contrary, Mr. K. Balakrishnan, learned Additional Government Pleader has contended that the Secretary to Government, vide letter dated 03.10.2003, has duly rejected the application of the petitioner school claiming grant-in-aid and sanction of post graduate assistant posts, taking into consideration, the financial position of the Government and the similar applications from other institutions. It is also the strenuous contention of the Additional Government Pleader that the petitioner school cannot claim sanction of posts and financial aid as a matter of right and upgradation of school was given only upon request by the petitioner school on receipt of declaration from it that it may not claim any financial aid in future and as such, the petitioner cannot claim for sanction of post-graduate assistant posts and grant-in-aid and accordingly, its request was rightly rejected by the respondents.

9. The learned Additional Government Pleader has further argued that the contention of the petitioner that the classes for Higher Secondary were started in the year 1986 and sanction for upgradation was accorded on 31.01.1991 cannot be a ground for granting aid inasmuch as the petitioner has violated the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act by running Higher Secondary classes without obtaining prior permission and the Act exempted the minority institutions only in respect of opening schools and not with respect to any financial aid and in that view of the matter, the order under

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challenge, passed by the first respondent, has to be upheld. He has also submitted that this writ petition is covered by a Division Bench judgment of this Court reported in 2006 5 CTC 193 and as such, this writ petition may be dismissed based on the ruling laid down in the said judgment.

10. Heard Mr. R. Subramanian, learned Senior Counsel appearing for the petitioner and Mr. K. Balakrishnan, learned Additional Government Pleader for the respondents.

11. Now, the question arising for consideration in this petition is whether the petitioner school is entitled to get sanction for post-graduate assistant posts and other staff strength and also grant for payment of salary thereon for higher secondary classes.

12. Admittedly, the petitioner school was started as a Middle School in 1949 and was upgraded as a Higher Secondary school from 1976; higher secondary classes were commenced from 1986-87 and later on, approval was given on 31.10.1991. The upgradation was given from the academic year 1991-92 on certain conditions. The Government had authorised the Director of School Education to upgrade 18 High Schools into Higher Secondary schools and the petitioner school is one such school and it has been upgraded from the academic year 1991-92 vide proceedings dated 31.10.1991. A batch of writ petitions was filed by a number of similarly placed schools falling under minority and non-minority categories with the similar set of facts and relief and they have not been granted any aid on or after 1991-92 on the ground of financial burden to the State exchequer. The judgment reported in (2006) 3 MLJ 242 in the case of C. Manonmony vs. State of Tamil Nadu represented by its Secretary, Education Department, Chennai - 9 and others which is relied on by the counsel for the petitioner was also taken on appeal and the same was disposed of along with the batch of cases. Reliance placed by the Additional Government Pleader on the Division Bench judgment of this Court reported in 2006 5 CTC 193 in the case of Maria Grace Rural Middle School, Venkatanarayanapuram, Nanguneri Taluk, Tirunelveli Kattabomman District, represented by its Correspondent, Rev. Fr. A. Antony Raj vs. The Government of Tamil Nadu, represented by its Secretary, Education Science and Technology Department, Fort St. George, Chennai - 9 and others which deals with similar facts and the relief sought as in this case is squarely applicable to the case on hand and the relevant paragraphs of the said judgment are extracted hereunder:

> "43. In C. Manonmony vs. State of Tamil Nadu, 2006 (3) MLJ 242, the learned Single Judge has held that want of finance cannot be a ground to deny the sanction of post to an aided school and the same is not with reference to the undertaking given at the time of recognition. At this juncture, it is useful to refer the stand of the Government as explained in para - 16 of the counter affidavit, wherein it is stated that the implementation of Fifth Pay Commission, 1988 led to a hike in the pay of teachers as never before, which is an added financial burden to the State exchequer. It is also stated that a large number of management applied for starting schools during 1991-92 and it was just not possible for the Government to grant

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recognition with aid because of paucity of funds and as the Government was at the peak of its financial crisis, it took a policy decision not to give financial assistance to the schools started from 1991-92. It is further stated that the Government took a decision that recognition would be granted to such institutions which give an undertaking that they are not seeking grant and will not seek grant for ever. Accordingly, only schools which gave an undertaking that they were willing to start school or to upgrade school with higher classes without seeking aid from Government for ever were given opening permission and recognition. The Government in their letter Ms.No.89 Education (R1) Department, dated 29.01.1993 approved an agreement form, in which the management of private unaided primary/middle/high/higher secondary schools, which seek permission to open new schools/recognition for newly started schools/recognition for existing schools which have been upgraded, had to enter into an agreement with the Director of School Education, giving an undertaking for the non-claim of aid from the Government for ever.

44. According to the Government, the management, which wanted to start schools from 1991-92 were well aware of the fact that Government would not grant any aid and voluntarily came forward to start schools in spite of the condition imposed by the Government. The management gave the undertaking that they would not claim aid and obtained opening permission followed by recognition. With total conscious of the implications of the condition imposed by the Government and the undertaking given, the management came forward to start schools. In such circumstances, as rightly pointed out, the Government did not thrust anything on the management. It is also brought to our notice that all institutions, whether minority or non-minority have been granted recognition without aid for ever and there is no discrimination in this regard. True it is, the undertakings given by the management are not binding, however, it cannot be claimed that the management of schools are not aware of the circumstances. We have already explained the circumstances under which the Government brought in the impugned amendment which is applied to all, whether minority or non-minority institutions. In view of the reasons and position of the Government in financial aspects as well as of the fact that the Government reached the 100% Gross Access Rate even in 2003-2004 with the existing schools, we are unable to accept the claim made by the learned counsel for the petitioners/appellants.

45. With regard to the contention relating to the violation of Articles 30 (1) and (2) of the Constitution, it is the definite case of the State that it has in no way infringed the right of minorities to

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establish and administer educational institutions of their choice under Article 30(1). As rightly argued by the learned Advocate General, it is not correct to say that the right to establish and administer educational institutions of their choice includes the right to receive grant-in-aid for such establishment and administration as it would amount to reading too much into the provision. Grant-in-aid is an economic concept that would always depend upon the subjective satisfaction, financial stability and resources as well as the discretion of the State Government. It is also a matter of policy decision within the domain of the executive and not a matter of principle to be laid down by the legislature.

46. Article 30(2) only speaks about non-discrimination between minorities and non-minorities in the subject of grant-in-aid. The policy of the State Government covers all private schools on or after 1991-92 or those in existence during the academic year 1991-92, but not receiving aid before 1991-92, uniformly without any reference to their minority or non-minority status. Thus, we are satisfied that Article 30(2) is not attracted.

47. Annexure III gives an overall view of the number of schools opened from the academic year 1991-92 and granted recognition so far with details of additional expenditure that Government will have to incur if aid is paid. The number of aided schools established from the year 1990-91 and the financial commitment which has been steeply increasing are clearly shown in Annexure I and II. The number of primary and middle schools opened over the past five years and the Gross Access Rate are furnished in Annexure IV. These figures clearly indicate that the Government is always keen in opening schools depending on the need of the locality and it has never waited for the management to open schools.

48. As rightly pointed out, the recognition cannot be linked with aid and the recognition is not a pre-condition for aid, nor is aid a precondition for recognition. The State has all powers to enforce norms and impose conditions as a pre-requisite for recognition. As discussed earlier, aid is not automatic and cannot be claimed as a matter of right. The facts and figures furnished in the Annexures which we have already referred to in the earlier part of our order clearly show that the State has been fulfilling its obligation under Article 45 of the constitution safeguarding the fundamental right to education and the management cannot claim that in order to help the State to fulfill its constitutional obligation, aid must be granted to their schools."

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13. Apart from the above, it would also be useful to refer to Section 14 and Section 14(A) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, which reads as under:

14. Payment of grant:-

(1) Subject to such rules as may be prescribed, the Government may continue to pay grant to the private school receiving grant from the Government, before the date of commencement of the academic year 1991-1992 at such rate and for such purpose as may be prescribed.

Explanation: for the purposes of this sub-section, private school receiving grant from the Government shall also include a private school receiving grant from the Government only in respect of any class or course of instruction.

14-A: Grant not payable to new private schools and new class and course of instruction

Notwithstanding anything contained in this Act or in any other law for the time being in force in any judgment, decree or order of any Court or other authority, no grant shall be paid to:

a any private school established and any class or course of instruction opened in such private school, on or after the date of commencement of the academic year 1991-1992;

b any private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement;

c any class or course of instruction in a private school in existence on the date of commencement of the academic year 1991-1992 in a private school in existence on the date of such commencement.

Explanation: For the purpose of this Section, private school includes a minority school.

14. I have given careful consideration to the facts and circumstances of the case on hand and also the ruling of the Division Bench of this Court (supra) which is squarely applicable to the facts of the present case. It is seen that the Government had authorised the Director of School Education to upgrade 18 High Schools into Higher Secondary schools and the petitioner school is one such school and it has been upgraded from the academic year 1991-92 vide proceedings dated 31.10.1991. A batch of writ petitions was filed by a number of similarly placed schools falling under minority and non-minority categories with the similar set of facts and relief and they have not been granted any aid on or after 1991-92 on the ground of financial burden on the State exchequer. The petitioner school is also one such school which commenced classes from academic year 1991-92. and knowing

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fully well that the Government would not grant any aid, the petitioner school has been started. That apart, the petitioner school had also giving an undertaking that they would not claim aid and had obtained opening permission followed by recognition. With the fullest knowledge and the implication of the condition only, the petitioner school has been started by its Management. When the fact remains that the schools, whether minority or non-minority, have been granted recognition without aid for ever, the petitioner Management, which having commenced the classes and thereafter, obtained recognition, has no reason to claim any right seeking grant for payment of salary to the post-graduate assistant teachers.

15. Thus, under the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, the minority institutions are exempted only in respect of opening schools and not with respect to any financial aid and in that view of the matter, the order under challenge passed by the first respondent is in no way contrary to the rules and there is no violation of Article 30(1) and 30 (2) of the Constitution as there is no discrimination between minority and non-minority institutions. It is to be noted here that only after considering the economic capacity of the State, the State Government, as a matter of policy stopped payment of grant to elementary schools established in 1988 and the schools which applied for grant of permission to open new schools / upgradation under the previous Act, as a matter of fact, did not claim grant from the year 1988 onwards for a period of three years. On completion of the said three years, grant was sanctioned to some schools with effect from 01.06.1991 in a phased manner. Subsequently, due to heavy financial burden confronted by the State Government, it was again decided to dispense with the payment of grant and accordingly, Government Order has been issued. These are all matters of financial burden on the State exchequer and the authorities have considered all the aspects of the matter and passed the order under challenge.

Considering the facts and circumstances of the case, the position prevailing as on date as per the ruling of the Division Bench (supra) and also in the absence of violation of any constitutional right, I do not see any legal infirmity with the impugned order and as such, the same is confirmed; accordingly, the writ petition fails and is dismissed without any order as to costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Commissioner & Secretary
   Education Department
   Government of Tamil Nadu
   Fort St. George, Chennai - 600 009

2. The Director of School Education
   College Road
   Chennai - 600 006

3. The Chief Educational Officer
   Nagercoil
   Kanyakumari District

4. The District Educational Officer
   Kuzhithurai
   Kanyakumari District

+ 1 CC To M/s.S.Hemalatha, Advocate SR NO.15778
+ 1 CC to the Government Pleader SR NO 15230

W.P. No.31104 of 2003

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